

UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

MICHAEL JOSSY,

Plaintiff,

vs.

STATE OF HAWAII, et al.,

Defendants.

CIV. NO. 19-00055 LEK-RT

**ORDER DISMISSING CASE WITH PREJUDICE**

On January 28, 2019, pro se Plaintiff Michael Jossy ("Jossy") filed his prisoner civil rights Complaint. ECF No. 1. On May 29, 2019, an Order Dismissing Complaint with Leave to Amend ("5/29/19 Order") was issued. ECF No. 7. Some of Jossy's claims were dismissed with prejudice, in other words, without leave to amend. 5/29/19 Order at 18. All of Jossy's other claims were dismissed without prejudice, in other words, with leave to file an amended complaint realleging those claims. Id. at 21-22, 24. However, some of the claims that were dismissed without prejudice were severed from Jossy's remaining claims. Id. at 24. The 5/29/19 Order stated: "If Jossy elects to amend his pleading, he must decide which claims he will pursue in **this** action and file an amended pleading setting forth those claims against the appropriate Defendants. Jossy may then file a

separate, new action or actions alleging his remaining claims.”  
Id. (emphasis in original).

The deadline for Jossy to file an amended complaint was June 19, 2019. Id. at 33. He was cautioned: “Failure to file a timely file an amended pleading that cures the deficiencies discussed herein may result in dismissal of this action without further notice and result in a strike pursuant to 28 U.S.C. § 1915(g).” Id.

Jossy was granted an extension of the deadline to July 22, 2019. ECF No. 8 (motion requesting a six-month extension); ECF No. 9 (EO granting the request in part and denying it in part). He was later granted another extension to August 26, 2019. ECF No. 10 (motion requesting a six-month extension); ECF No. 11 (EO granting the request in part and denying it in part).

Because Jossy has neither filed an amended complaint nor requested an extension of the August 26, 2019 deadline, this Court has the discretion to dismiss the Complaint with prejudice. See Yourish v. Cal. Amplifier, 191 F.3d 983, 988 (9th Cir. 1999) (holding that the plaintiff’s failure to comply with a minute order setting forth the deadline to file the amended complaint gave the district court the discretion to

dismiss the case under Fed. R. Civ. P. 41(b)).<sup>1</sup> After weighing the five dismissal factors set forth in Dreith v. Nu Image, Inc., 648 F.3d 779, 788 (9th Cir. 2011),<sup>2</sup> this Court finds that the public interest in the expeditious resolution of this litigation and this Court's interest in managing the docket strongly outweigh the policy favoring disposition of cases on the merits. Moreover, the defendants will not be prejudiced by dismissal because the Complaint was not served, and there are no less drastic alternatives available at this time.

The claims in Jossy's Complaint that were dismissed without prejudice in the 5/29/19 Order are HEREBY DISMISSED WITH PREJUDICE. The dismissal is with prejudice insofar as Jossy will not be allowed to file an amended complaint in **this** case, and this case will be closed. The dismissal of this case with

---

<sup>1</sup> Fed. R. Civ. P. 41(b) states, in pertinent part: "If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it."

<sup>2</sup> The Ninth Circuit has

identified five factors that a district court must consider before dismissing a case . . . : (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the other party; (4) the public policy favoring the disposition of cases on their merits; and (5) the availability of less drastic sanctions.

Dreith, 648 F.3d at 788 (citations and quotation marks omitted).

prejudice does not prevent Jossy from filing **new** actions that sever the claims which he attempted to bring in this case. See 5/29/19 Order at 24. No findings nor conclusions are made regarding the merits of such separate actions.

This Court DIRECTS the Clerk's Office to close the case on **October 16, 2019**, unless Jossy files a timely motion for reconsideration of this Order as provided for in the Local Rules of Practice for the United States District Court for the District of Hawaii.

IT IS SO ORDERED.

DATED AT HONOLULU, HAWAI`I, September 16, 2019.



/s/ Leslie E. Kobayashi  
Leslie E. Kobayashi  
United States District Judge

**MICHAEL JOSSY VS. STATE OF HAWAI`I, ET AL.; CV 19-00055 LEK-RT;**  
**ORDER DISMISSING CASE WITH PREJUDICE**